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U.S. Patent Application No. 09/978,432
Filed: October 15, 2001
Title: End-to-End Governed Data Transfers in a Network
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Following in this transmission are the following:

Request for Pre-Appeal Brief Review (5 pages);
Notice of Appeal (in duplicate); and
Petition for Extension of Time (in duplicate).

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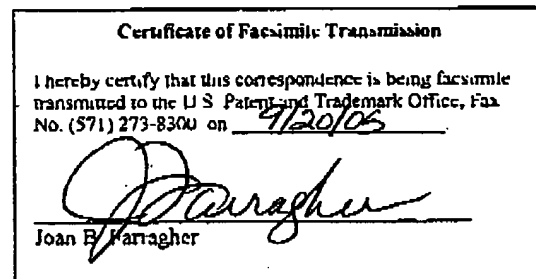SEP 2 1 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:   09/978,432

Applicant: :   Yaseen et al.

Filed   :   October 15, 2001

Title: :   End-to-End Governed Data Transfers in a Network

Art Unit   :   2143

Examiner   :   Bilgrami, Asghar H.

Docket   :   5022.8-1

Customer No :   23559

MAIL STOP: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. This request is being filed with a notice of appeal.

There are a number of clear errors made in the rejection of pending claims 1-15 under sections 102(e) and 103 of Title 35 of the United States Code. The examiner alleges that US publication no. 2002/0107908 of Dharanikota anticipates claims 1-3, 5-10, and 13-15, and renders obvious claims 4, 11 and 12 when combined with US patent publication no. 2002/0018264 of Kodialam et al. Errors underlying the rejections of all of the claims stem from misapplication of Dharanikota. Claims 1 and 9 are independent.

Background

Dharanikota explains that his invention is "directed to a network element (e.g., an edge router, core router, or transit router, collectively, a routing element) that is organized as a plurality of terminating line cards or TLKs interconnected via a switch fabric capable of

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supporting virtual ingress/egress pipes (VIEPS) between transmitter cards (ingress cards) and receiver cards (egress cards)." Paragraph [0012]. The example that is disclosed is a single network element 200, possessing a plurality of termination line cards (TLKs) 202A, etc., interconnected by a switching fabric 204. See, Fig. 2 and paragraph [0031]. Each TLK has one side that communicates with the switching fabric and another side that communicates with an external link. See Fig. 3.

All of the claims in the present application are, however, directed to a network having a plurality of nodes. The two independent claims, claims 1 and 9, each require multiple nodes interconnected by at least one communication channel, and disallowance of data transfers in violation of ingress and egress restrictions on data transfers in and out of each of the nodes on the communication channel. For example, claim 1 specifically requires:

> a first node and a second node having at least one communication channel interconnecting the nodes, the first node and the second node each having at least one ingress rate restriction for data transfers from the respective node over the at least one communication channel, and at least one egress rate restriction for data transfers to the respective node on the at least one communication channel;
>
> a management node having communication channels with at least one of the plurality of nodes, the management node being operable to disallow at least a portion of a requested transmission from the first node to the second node when one of the ingress and egress rate restrictions of the first or second node is violated by the requested transmission

Similarly, claim 9 requires:

> defining an ingress rate restriction for each of at least two nodes of the plurality of nodes, the ingress rate restriction limiting the amount of data that may be transmitted from the respective node on at least one channel of the network;
>
> defining an egress rate restriction for each of the at least two nodes of the plurality of nodes, the egress rate restriction limiting the amount of data that may be transmitted to the respective node on the at least one channel of the network;
>
> defining an egress rate restriction for each of the at least two nodes of the plurality of nodes, the egress rate restriction limiting the amount of data that may be transmitted to the respective node on the at least one channel of the network;
>
> monitoring the amount of data transmitted from and to a first node; and

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disallowing at least a portion of one of an attempted data transfer from and to the first node when one of the respective ingress rate restriction and egress rate restriction would be violated by the attempted data transfer.

Dharanikota never mentions data rate restrictions with respect to transmissions between nodes, much less limiting data rate restrictions on data transfer on a data channel between two nodes when an ingress restriction at one end or egress restrictions at the other end of the data channel is violated.

Errors in the Section 102(e) Rejection

It is respectfully submitted that the section 102(e) rejection is in error for at least the following reasons.

(1) Dharanikota makes no mention of multiple nodes in the passages cited by the examiner, namely paragraphs [0012], [0054] and [0059]. This is not surprising given that the Dharanikota is describing the operation of a single network element. Paragraph [0012] describes only "a network element (e.g., an edge router, core router, or transit router, collectively, a routing element) ... ." Cited paragraph [0054] talks about using counters on the egress and ingress TLKs, and paragraph [0059] describes only marking packet streams within the network element using a three-color marker (TCM), each from the perspective of a network element.

(2) Dharanikota makes no mention in the cited passages of setting ingress and egress rate restrictions for each of a plurality of nodes connected by at least one communication channel. In the cited paragraph [0054], they discuss having counters 506 in ingress TLKs of the network element for monitoring traffic switched to queues in TLKs on the egress side, and using counters 512 to monitor traffic egressing from the element. However, there is no mention of setting egress and ingress rates for each of a plurality of nodes in a network. It is submitted that the counters are used only to monitor performance of the network element.

(3) Dharanikota makes no mention in the cited passages of disallowing traffic flow between nodes on a network when a data rate restriction is violated. The examiner cites paragraph [0059], but this paragraph simply states:

> The TCMs [three color markers] 600A and 600B can be used to mark a packet stream in a service, where decreasing levels of assurances (either absolute or relative) are given to packets depending on their color. For example, a service may discard all red packets, because they exceeded both CIR and CBS, forward

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yellow packets as best effort, and forward green packets with a low drop probability (e.g., AF traffic).

Dharanikota thus fails to meet each and every element of claims 1 and 9. They cannot, as a matter of law, anticipate claims 1 and 9 under 35 U.S.C. §102(e). The rejections of dependent claims 2, 3, 5-8, 10 and 13-15 are also in error for at least the same reasons. Other errors in the rejection of claims 1-3, 5-10, and 13-15 have not been addressed, though the right to complain of those errors is reserved.

The examiner appears to argue at one point that he is entitled to draw "reasonable inferences which the artisan would have logically drawn therefrom...." Assuming for the sake of argument that he is in fact entitled to rely on teachings implicit in a reference – applicant is not admitting that he is -- he nevertheless fails to establish a *prima facie* rejection by neither identifying these inferences nor explaining how they are logically derived from the teachings of Dharanikota. Furthermore, any right to rely on teachings implicit in a reference does not confer license to ignore the basic legal principal that, for a reference to anticipate a claim, it must meet each and every limitation of the claim. Dharanikota clearly does not and cannot meet each and every limitation.

Errors in the Section 103 Rejection

The rejections of claims 3, 4, 11 and 12 as being obvious in view of the combination of Dharanikota and Kodialam et al. appear to be premised on the same erroneous reading of Dharanikota discussed above, and are in error for at least the same reasons. The right to complain of other errors in the reasoning of this rejection is reserved.

Conclusion

In conclusion, the rejections of all pending claims are in error and should be withdrawn. Allowance of the application is respectfully requested. By addressing these particular errors, Applicant is not waiving any other grounds of error, or limiting these grounds of error to the reasoning expressed. It reserves the right to address all grounds of error on appeal, before the Board, without prejudice.

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Please charge deposit account no. 13-4900 of Munsch Hardt Kopf & Harr, P.C. any additional fees associated with this paper.

Respectfully submitted,

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